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APR 28 2011

OFFICE OF PETITIONS

Patent No. RE39540 :
Sokolov et al. :
Issue Date: April 3, 2007 :
Application No. 10/691,432 : DECISION ON PETITION
Filed: October 23, 2003 :
Attorney Docket No. P8297R :

This is a decision on the REQUEST FOR RECONSIDERATION OF
DECISION ON PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT
OF MAINTENANCE FEE filed April 12, 2011.

The decision on petition mailed December 21, 2010 is hereby
withdrawn.

For the reasons stated herein, the petition under 37 CFR
1.378(c) is **GRANTED**. No fee is required for consideration under
37 CFR 1.378(e).

By decision mailed December 21, 2010, the petition under 37 CFR
1.378(c) was dismissed. It was determined that the grace period
for paying the first maintenance fee provided in 37 CFR 1.362(e)
expired at midnight on October 23, 2005, with no payment
received. Accordingly, the petition filed almost five years
later was dismissed as a petition under 1.378(c) must be filed
within 24 months of the expiration of the patent.

In response, patentee filed the instant request for
reconsideration, pointing out that the first maintenance fee had
been paid in the original patent on April 25, 2005. Further,
their petition filed October 20, 2010, petitioned to have the
second (8th year) maintenance fee accepted, not the first (4th
year) fee.

Patentee is correct. The undersigned erred in overlooking the payment of the first maintenance fee in the record of the original patent. The petition as originally filed on October 20, 2010 included payment of both the first and second maintenance fees and late surcharges where the delay is unintentional for both. Thus, the undersigned thought that the first maintenance fee had not been previously paid.

The reissued patent issued January 22, 2002. This reissue patent is based on an original non-reissue application¹, which issued on October 23, 2001. A further review of Office records confirms, as stated by patentee, that the first maintenance fee was paid in the original patent No. 6,307,878 on April 25, 2005. The period for paying the second maintenance fee expired on October 23, 2009, with no payment received.

The requirements of 37 CFR 1.378(c)² for accepting unintentionally delayed payment of the second maintenance fee have been met (and were met as of the filing of the petition on October 20, 2010). The initial petition was filed within twenty-four months after the actual expiration of the six-month grace period at midnight on October 23, 2009. As required, petitioner submitted with the petition the required maintenance fee, the surcharge for accepting an unintentionally delayed maintenance fee after expiration, and a statement that the delay in payment of the maintenance fee was unintentional.

Accordingly, the maintenance fee in this case is hereby accepted and the above-identified patent is hereby reinstated as of the mail date of this decision.

¹ 37 CFR 1.362(h) provides that:

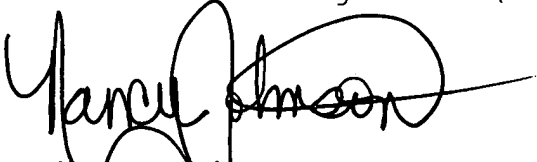
the periods specified in §§ 1.362 (d) and (e) with respect to a reissue application, including a continuing reissue application thereof, are counted from the date of grant of the original non-reissue application on which the reissued patent is based.

² 37 CFR 1.378(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

- (1) the required maintenance fee set forth in § 1.20(e)-(g);
- (2) the surcharge set forth in § 1.20(i)(2); and
- (3) a statement that the delay in payment of the maintenance fee was unintentional.

The overpayment of the first maintenance fee and surcharge is being refunded to the Deposit Account, as authorized.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.



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